

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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<i>Flora Abrevaya, et al.</i>	:	
Plaintiffs,	:	THIRD-PARTY
	:	COMPLAINT
	:	
	vs.:	
<i>Sunoco, Inc., et al.</i>	:	Index No. 2003-7403
	:	(McGuirk)
Defendants.	:	Date of Filing:
	:	<u>3/21/06</u>
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<i>Sunoco, Inc. and Sunoco, Inc. (R&M),</i>	:	
Defendants and Third-Party Plaintiffs,	:	
	:	
	vs.:	
<i>Town of Highlands, New York,</i>	:	
Third-Party Defendant.	:	
----- X	:	

Now come Defendants and Third-Party Plaintiffs Sunoco, Inc., and Sunoco, Inc. (R&M) (hereinafter "Sunoco"), by and through their attorneys, pursuant to Section 1007 of the New York Civil Practice Law and Rules ("C.P.L.R."), and for their Third-Party Complaint Against the Town of Highlands, New York, state as follows:

1. On or about October 24, 2003, Flora Abrevaya, Bruce E. Baker, Mary L. Baker, Anthony Brigandi, Thomas R. Nicks, Raymond Brown, Louisa M. Cable, G&C Properties, Inc., Benedicte Calhoun, Demetrian J. Calhoun, Mary Canausa, Michael Canausa, Jennifer

Carrasquillo, Russell Carrasquillo, Jane Cavanagh, Joseph Cavanagh, Stuart Chaney, James Christoff, Gloria Christoff, Linda Cutaia, Carmella Emirio, John G. Fitzsimons, Jenean Fitzsimons, Fort Montgomery Road Holding Corp., Fort Montgomery United Methodist Church, Robert J. Gokey, Paula Holt, Terrence Holt, Jane LaGuardia, Vitina Lopez, Paul Lopez, Stephen W. McAnney, Carol L. McAnney, Laura DaDario a/k/a Laura Manzare, Michael Manzare, Andrew Marcinak, Frances Marcinak, Andrew and Rebecca Realty, Inc., John C. Miles, Robert G. Monroe, James Morgan, Patricia Morgan, Barbara Murphy, John O'Connell, Jeanne O'Connell, Diane B. Pizzuti, Geoffrey D. Provan, Karen Rossini, Michael Rodriguez, AnnMarie Ruscelli, Anthony Ruscelli, Mary L. Russell, Bernard G. Russell, Sr., John Ryerson, Catherine Ryerson, Richard Salva, Elizabeth Sevik, Lori Sheldon, James Sheldon, Anthony Squicciorini, Rachelle Squicciorini, John M. Thibault, Josephine Thibault, Amy Vingoe, William Vingoe, John P. Wort, Jr., and Margaret Jean Wort (hereinafter "Plaintiffs") filed suit against Sunoco and other purported manufactures, designers, refiners, formulators, distributors, suppliers, sellers, and marketers of the gasoline additive methyl tertiary butyl ether ("MTBE") and/or gasoline products containing MTBE for alleged damages resulting from environmental harm or threatened environmental harm to their groundwater or water systems from MTBE, and/or gasoline containing MTBE. Exhibit A.

2. Plaintiffs allege that Sunoco and other defendants named in their complaints (hereinafter, "Defendants") caused harm or threatened harm to their groundwater or water systems by manufacturing, designing, refining, releasing, formulating, distributing, supplying, selling and/or marketing MTBE, and/or gasoline containing MTBE, and that Defendants are liable to Plaintiffs for the damages allegedly resulting therefrom.

3. Specifically, Plaintiffs assert claims against Sunoco and various other defendants for strict liability – design defect, defective product and/or failure to warn; negligence; trespass; nuisance; intentional interference with the right to appropriate groundwater; declaratory relief; unfair competition pursuant to New York General Business Law § 349; emotional distress; and Article 12 of the New York Navigation Law.

4. Sunoco, Inc. and Sunoco, Inc. (R&M) are Pennsylvania corporations with their principal place of business at 1735 Market Street, Philadelphia, PA 19103.

5. Jurisdiction is proper in this Court pursuant to C.P.L.R. §§ 301 and 1007.

6. Venue is proper in this Court pursuant to C.P.L.R. §§ 504 and 1007.

7. Sunoco denies liability on Plaintiffs' claims and for Plaintiffs' alleged damages and incorporates by reference its Answer to Plaintiffs' Complaint. Exhibit B.

8. The Town of Highlands is a municipality operating under the laws of the State of New York, and maintains its principal offices at 254 Main Street, Highland Falls, New York 10928.

9. The Town of Highlands, at all times relevant to this litigation, owned and operated the Town of Highlands Highway Garage, located at 133 Firefighter Memorial Drive, in the Hamlet of Fort Montgomery, Town of Highlands, Orange County, New York (the "Highway Garage").

10. Plaintiffs are specifically seeking damages resulting from the alleged contamination of their groundwater by MTBE.

11. Plaintiffs' wells and the associated aquifer and/or groundwater are located near the Highway Garage.

12. On information and belief, MTBE, and/or gasoline containing MTBE, and/or other contaminants have been released from the underground storage tanks, piping, lines and/or equipment at the Highway Garage, or during the filling of underground storage tanks, piping, lines, equipment and/or vehicles, or during the maintenance of vehicles and/or equipment at the Highway Garage, and began to migrate underground, eventually reaching Plaintiffs' groundwater or water systems.

13. If Sunoco is found to be liable to Plaintiffs for the allegations made against it, then Sunoco is entitled to indemnification and/or contribution from the Town of Highlands.

Third-Party Claims Against the Town of Highlands
(Indemnity and Contribution)

14. At all relevant times the Town of Highlands had a duty to:
- a. safely and properly use, handle, or store petroleum products, including gasoline containing MTBE;
 - b. safely and properly receive or accept delivery or transfer of petroleum products, including gasoline containing MTBE;
 - c. install, remove, replace, excavate, inspect, repair, monitor, test, examine or maintain its underground storage tanks, piping, lines and equipment, so as not to allow a release of product from the underground storage tanks, piping, lines and equipment;
 - d. timely, safely and properly clean up, remediate, mitigate, eliminate or control releases, spills or leaks of petroleum products, including gasoline containing MTBE;
 - e. institute measures to prevent spills of petroleum products, including gasoline containing MTBE;
 - f. safely and properly dispense or pump petroleum products, including gasoline containing MTBE into automobiles and other vehicles and equipment; or
 - g. adhere to applicable laws, rules, regulations, guidelines or procedures relating to the use, handling or storage of petroleum products, including gasoline containing MTBE.

15. The Town of Highlands breached one or more of these duties by allowing: releases, spills or overflows of petroleum products, including gasoline containing MTBE from the Highway Garage; the soil and/or groundwater at the Highway Garage to become contaminated by petroleum products, including gasoline containing MTBE; and/or allowing petroleum products, including gasoline containing MTBE, to reach Plaintiffs' groundwater and/or water systems.

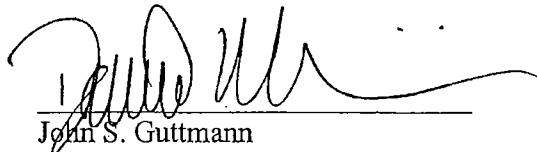
16. As a direct and proximate result of the Town of Highlands' actions and inaction, the Town of Highlands either caused or contributed to the alleged harm or threatened harm to Plaintiffs' groundwater or water systems and any and all resulting damages to Plaintiffs as alleged in their Complaint, and thus, the Town of Highlands is liable to Sunoco for all or part of Plaintiffs' claims against Sunoco.

17. To the extent that Sunoco is found liable to Plaintiffs in any way, Sunoco is entitled to indemnity or contribution from the Town of Highlands pursuant to New York law.

18. In the event that the Town of Highlands is found not to have been wholly responsible for any Plaintiff's loss or damage, the relative culpability of the Town of Highlands must be compared by the trier of fact in this matter in its assessment of the relative fault for Plaintiffs' injuries, if any.

WHEREFORE, Sunoco respectfully requests that to the extent it is held liable for damages to Plaintiffs, that the Town of Highlands be held liable for all or part of any damages that may otherwise be ordered against Sunoco and in favor of Plaintiffs.

Dated: March 21, 2006

A handwritten signature in black ink, appearing to read "John S. Guttman", is written over a horizontal line.

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